

**From:** AED Legal <[aedlegal@aed.org.au](mailto:aedlegal@aed.org.au)>  
**Sent:** Monday, 24 October 2022 9:31 AM  
**To:** Chambers - Hatcher VP <[Chambers.Hatcher.VP@fwc.gov.au](mailto:Chambers.Hatcher.VP@fwc.gov.au)>  
**Cc:** Claudia Simmons <[Claudia.Simmons@Ablawyers.com.au](mailto:Claudia.Simmons@Ablawyers.com.au)>; Ashley Sherr <[Ashley.Sherr@sparke.com.au](mailto:Ashley.Sherr@sparke.com.au)>; Emma Gruschka <[Emma.Gruschka@sparke.com.au](mailto:Emma.Gruschka@sparke.com.au)>; Mary Walsh <[marywalsh6@bigpond.com](mailto:marywalsh6@bigpond.com)>; [louised@hsu.net.au](mailto:louised@hsu.net.au); Peter Cummins <[peter.cummins@catholiccare.org](mailto:peter.cummins@catholiccare.org)>; Illy Rogers <[illy.rogers@catholiccare.org](mailto:illy.rogers@catholiccare.org)>; Ben Redford <[ben.redford@unitedworkers.org.au](mailto:ben.redford@unitedworkers.org.au)>; Nigel Ward <[Nigel.Ward@ablawyers.com.au](mailto:Nigel.Ward@ablawyers.com.au)>; Kyle Scott <[Kyle.Scott@ablawyers.com.au](mailto:Kyle.Scott@ablawyers.com.au)>; 'Kirrily Boulton' <[Kirrily.Boulton@endeavour.com.au](mailto:Kirrily.Boulton@endeavour.com.au)>; 'Kerrie Langford' <[Kerrie.Langford@nds.org.au](mailto:Kerrie.Langford@nds.org.au)>; Chris Christodoulou <[chrisc@greenacres.net.au](mailto:chrisc@greenacres.net.au)>; AED Legal <[aedlegal@aed.org.au](mailto:aedlegal@aed.org.au)>; Phillip Zlatkovic <[phillip.zlatkovic@aed.org.au](mailto:phillip.zlatkovic@aed.org.au)>; Sunil Kemppi <[skemppi@actu.org.au](mailto:skemppi@actu.org.au)>  
**Subject:** AM2014/286 - SES Award - Request re ABI and NDS 8 July submissions  
**Importance:** High

Dear Associate

Whilst on 20 October 2022 the Vice President invited the ABI represented employers to nominate any wage rates linked with Attachment A of its 8 July 2022 submission, there was no invitation for it to engage in a further round of evidence and submissions. Yet that is, in effect, what ABI has done.

The Full Bench will observe that ABI's 8 July 2022 outline of submissions was conspicuously silent about the rates of pay for the Attachment A classifications or the justification for any such rates. In their 22 July 2022 reply to this submission, the Full Bench will recall that the employee parties (which includes AED) said in paragraph [45]:

The Employer Parties offer no evidence that justifies the rates of pay they propose. No attempt is made to explain, let alone, justify their proposal against other awards or the National Minimum Wage. The proposal is a bare claim for a grant of legal authority to pay less for their labour.

The position did not become any clearer during the hearings before the Full Bench.

It is accepted that rates were contained in the letters of instruction (as they appear to be) attached to witness statements filed by ABI prior to hearing, but those statements did not contain evidence that explained those rates or their basis. Nor did the letters of instruction. Now, for the first time, ABI makes some attempt to say something to justify the rates contained in those attachments.

There is no objection to the Full Bench taking notice of the bare wage rates referred to in the letters of instruction. However, AED does object to the Full Bench receiving or giving weight to the

additional arguments ABI has proffered in its email of 21 October 2022 sent to the Vice President's chambers at 2.59pm. There was no grant of leave to engage in further evidence or argument. It is unfair for the ABI to utilise the Vice President's request to address now what it left unaddressed prior to and during hearing.

Should you have any queries, please do not hesitate to contact our office.

Kind Regards,

**Michaela Quadara**

**Legal Practitioner**

**On behalf of,**

**AED LEGAL CENTRE**